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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,150	12/02/2003	Cathy Jean Ludwig	77087	2802
48940	7590	01/10/2006	EXAMINER	
FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,150	Applicant(s) LUDWIG ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: the specification contains numerous incomplete words such as "lik" on page 3, line 3, "ncapsulated, on page 11.

Also, no serial number is found on pages 6 and 14, for a case incorporated by reference by applicants.

Claims 6, 9, 15 and 20 also have incomplete words.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumitani (4,201,794) or Seichi et al. JP (63148963) or Katsunari et al. (JP220778) in view of Cherukuri (2001/0048965) and Cherukuri et al. (4,981,698) and Sair et al. (4,230,687) and Kenji JP (59227276)

Sumitani disclose a soluble powder composition for a soft drink which contains anthraquionoid compounds, organic acids or alkaline salts in which the acids or the salts are coated with water- soluble substances (encapsulating coating), which when the powder is put into a solution, the color of the anthraquionoid compounds is changed

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(abstract and col. 1, lines 59-70, col. 2, lines 35-36). The pH regulator is coated with one or more water-soluble coating materials to suddenly change the shade of color (col. 2, lines 60-65). Seichi '963 discloses a juice containing a soluble particle containing an acid, a basic substance and a food dye in which the color changes with the pH of the liquid. The acid (organoleptic ingredient) is positioned near the center of the soluble particle giving reason to believe that the particle is a layered particle, i. e. with a basic or acidic substance and a food dye. Katsunari et al disclose a process of changing colors, by coating an acid with oyster shell powder and a coloring matter, which changes color according to the pH of the solution (abstract). Claim 15 differs from the references in having the modifying agent in the coatings. The reference to Sumitani discloses that the flavors are made by drying a mixed solution of dextrin and lime or orange oil to form a powder (col. 1, lines 39-59). However, applicants' specification discloses that the modifying ingredients can be in the core or in the coatings (page 11, lines 1-10). Very little difference is seen in the core and the coating since the coating solution is intimately mixed with the powders (col. 1, lines 59-70 of Sumitani). Cherukuri discloses '965 a process for making an encapsulated product by mixing a flavor with sorbitol and magnesium stearate and tableting it, to make an encapsulated flavored caplet about 3 mm in size (0114 and 0108). The encapsulated products can be sweeteners, flavors, and colors. (0097). Cherukuri et al. '698 discloses a process in which the sweetener is encapsulated in a first core coating, and then an outer hydrophilic coating containing a second sweetener (abstract). Sweeteners are considered to be flavors. Also Sair et al. disclose that it is known to encapsulate

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flavorings and colorants in water soluble encapsulating materials such as starch, a gum or protein (abstract and col. 23, lines 1-40, col. 24, lines 5-25). Kenji discloses a process for making a particle for a beverage in which the dye is coated with a saccharide or an alginate, so that the color changes. As a double encapsulating step has been disclosed and it is known to use the modifying agents, it would have been within the skill of the ordinary worker to put then in the two coatings, which would when dissolved in water produce various effects as claimed.

Therefore, it would have been obvious to coat particles with the coating of Cherukuri, which contains both flavoring and color (optical) and with the ingredients of the other secondary references in the double coating of Sumitani, which would when the particles dissolve, provide a change in the color and flavor of the product.

Claim 16 further requires that there is an intervening inert layer between the first change and second change. Cherukuri '965 discloses the use of magnesium stearate in the second layer, which is seen to be an inert layer. Therefore, it would have been obvious to use an inert layer in the process of the combined references as claimed.

Claims 17 and 18 further require particular delay times. As the magnesium stearate has been shown, which is a fatty material, it would have been obvious to use particular amounts, which would have required particular delay times.

Changes in color and flavor as in claim 19 are seen to occur, since the method has been shown. Therefore, it would have been obvious to make a product in which the color and flavor changes as shown by the combined references.

Claim 20 further requires that the particles are in a beverage and that the powdered beverage is reconstituted with water. Katsunari discloses a powdery beverage, which is seen to be dissolved in a liquid. Water, is usually the solvent as in KOOL AID (Trademark) and other dry mixes. Therefore, it would have been obvious to use the claimed particles in a powdery dry mix.

Claim 23 further requires that the composite particles have a diameter of less than 4 mm. Katsunari discloses particle size of 12-32 mesh, Sumitani discloses granules of less than 0.5 mm (col. 1, lines 65-69). Therefore, it would have been obvious to make particles of the claimed size.

The limitations of claims 1-14 have been shown above and are obvious for those reasons. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 1-6-06


HELEN PRATT
PRIMARY EXAMINER